

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PEREGRINE FIXED INCOME LIMITED  
(in liquidation),

Plaintiff,

vs.

JP MORGAN CHASE BANK (formerly  
known As The Chase Manhattan  
Bank and having merged with  
Morgan Guaranty Trust Company  
of New York),

Defendant.

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DEPOSITION OF JP MORGAN  
BY DON THOMPSON  
New York, New York  
Wednesday, November 30, 2005

Reported by:

WENDY D. BOSKIND, RPR

JOB NO. 179637

<p style="text-align: right;">Page 150</p> <p>1 Thompson</p> <p>2 JPMorgan or any other person or persons</p> <p>3 that were contacted by or on behalf of</p> <p>4 JPMorgan".</p> <p>5 Are you competent to testify</p> <p>6 about that area?</p> <p>7 A. I believe the calculation</p> <p>8 statement that was provided broke out the</p> <p>9 valuation of the specified transactions by</p> <p>10 Reference Market makers. I don't know</p> <p>11 whether we were contacting any of the</p> <p>12 other enumerated entities in item 6.</p> <p>13 Q. So can you tell me why the</p> <p>14 Reference Market makers were only</p> <p>15 contacted on January 15th, 1998 for the</p> <p>16 Thai baht transactions versus some other</p> <p>17 debt?</p> <p>18 A. I cannot tell you specifically</p> <p>19 why it was that day as opposed to any</p> <p>20 other day.</p> <p>21 I suspect it was because we did</p> <p>22 not have the requisite information needed</p> <p>23 to contact them until that day.</p> <p>24 Q. But that's your speculation; is</p> <p>25 that right?</p>	<p style="text-align: right;">Page 152</p> <p>1 Thompson</p> <p>2 was, first of all, in accordance with the</p> <p>3 provisions of the agreement, which does</p> <p>4 not require or which does not prohibit the</p> <p>5 obtaining of indicative quotations and,</p> <p>6 secondly, it's in accordance with market</p> <p>7 practice.</p> <p>8 Q. Well, we will start, then, with</p> <p>9 ISDA Master Agreement.</p> <p>10 Where in the agreement does it</p> <p>11 say you were permitted to get indications?</p> <p>12 A. It does not prohibit the</p> <p>13 obtaining of indications.</p> <p>14 Q. But it also does not say --</p> <p>15 A. It does not expressly provide</p> <p>16 that indicative quotations are to be</p> <p>17 obtained.</p> <p>18 Q. And then, with regards to market</p> <p>19 practice, maybe you can explain to me what</p> <p>20 you mean, that that is proper or used in</p> <p>21 market practice.</p> <p>22 A. It is my understanding that</p> <p>23 most, if not all, major dealers, when</p> <p>24 involved in closeouts, obtain indicative</p> <p>25 quotations.</p>
<p style="text-align: right;">Page 151</p> <p>1 Thompson</p> <p>2 A. That's my understanding.</p> <p>3 If you care to draw a</p> <p>4 distinction between "speculation" and</p> <p>5 "understanding", so be it.</p> <p>6 Q. Okay. Well, did you gain that</p> <p>7 understanding by talking to other</p> <p>8 individuals?</p> <p>9 A. No.</p> <p>10 Q. And, so, it's your guess, as you</p> <p>11 sit here today, as to --</p> <p>12 A. My understanding at the time was</p> <p>13 as soon as we were ready and had the</p> <p>14 requisite information to obtain market</p> <p>15 quotations for Reference Market makers, we</p> <p>16 did so.</p> <p>17 Q. Okay.</p> <p>18 A. And we did not do so until we</p> <p>19 had that requisite level of information.</p> <p>20 Q. And with regards to valuing the</p> <p>21 specified transactions by the Reference</p> <p>22 Market makers, do you know why JPMorgan</p> <p>23 only requested indications versus actual</p> <p>24 market quotes?</p> <p>25 A. I believe that was -- yes, that</p>	<p style="text-align: right;">Page 153</p> <p>1 Thompson</p> <p>2 Q. Give me one second. (Pause.)</p> <p>3 You have testified that there</p> <p>4 were approximately 12 other transactions --</p> <p>5 strike that.</p> <p>6 You have testified that there</p> <p>7 were approximately 12 other closeouts that</p> <p>8 you were involved in under an ISDA Master</p> <p>9 Agreement. Can you tell me, of those</p> <p>10 other situations, how many of those used</p> <p>11 indications in market quotations versus</p> <p>12 real quotes?</p> <p>13 A. I can't give you a specific</p> <p>14 breakdown of that.</p> <p>15 I suspect most of them have</p> <p>16 involved either being silent on the point,</p> <p>17 in which case the Reference Market makers</p> <p>18 can choose to quote either on a firm or</p> <p>19 indicative basis or have said that</p> <p>20 indicative quotations are okay. They have</p> <p>21 taken place over a 20-year career, they</p> <p>22 are sporadic and episodic events. I</p> <p>23 simply cannot recall how many of them in</p> <p>24 each category.</p> <p>25 Q. Sure.</p>

<p style="text-align: right;">Page 154</p> <p>1 Thompson</p> <p>2 A. And when I mentioned "market</p> <p>3 practice", just to be clear, I believe</p> <p>4 "market practice" often involves you ask</p> <p>5 for quotations, there is no statement as</p> <p>6 to whether they are firm or indicative,</p> <p>7 and the Reference Market makers can choose</p> <p>8 to quote on either basis.</p> <p>9 Q. Am I correct in stating that</p> <p>10 JPMorgan provided some of the variables to</p> <p>11 these various transactions to the</p> <p>12 Reference Market makers when obtaining the</p> <p>13 quotations; is that right?</p> <p>14 A. I believe -- I am not sure</p> <p>15 whether -- some of it is accurate.</p> <p>16 I know, in some of the</p> <p>17 transactions, we did provide one of the</p> <p>18 variables, which was the spot exchange</p> <p>19 rate at the time.</p> <p>20 Q. And, based on your understanding</p> <p>21 of the ISDA Master Agreement, is that</p> <p>22 appropriate?</p> <p>23 A. Yes.</p> <p>24 Q. Why?</p> <p>25 A. Because it enables parties who</p>	<p style="text-align: right;">Page 156</p> <p>1 Thompson</p> <p>2 simply asked for a quote without providing</p> <p>3 the spot rate; correct?</p> <p>4 A. Yes, yes, we could have done</p> <p>5 that.</p> <p>6 Q. And is that -- has that been</p> <p>7 done on other occasions that you have been</p> <p>8 involved in?</p> <p>9 A. Uh -- I don't recall the precise</p> <p>10 breakdown between options, forwards, and</p> <p>11 swaps, and in the other closeouts I have</p> <p>12 worked on.</p> <p>13 I think what was different here,</p> <p>14 and led us to that conclusion, was it was</p> <p>15 overwhelmingly an option book.</p> <p>16 Now, one of the things we were</p> <p>17 mindful of, frankly, in doing that process</p> <p>18 and, again, remember that the market</p> <p>19 quotation provision is a liquidated</p> <p>20 damages provision, which is designed to</p> <p>21 provide objective third-party input into</p> <p>22 the value of transactions, to ensure that</p> <p>23 the legitimate interests of both the</p> <p>24 non-defaulting party and the defaulting</p> <p>25 party are protected, is that if we were to</p>
<p style="text-align: right;">Page 155</p> <p>1 Thompson</p> <p>2 are providing, for instance, a valuation</p> <p>3 of an option position, to isolate the</p> <p>4 value of the option as opposed to the</p> <p>5 separate immaterial value -- or</p> <p>6 differences in value which may be</p> <p>7 attributable to using different spot</p> <p>8 rates.</p> <p>9 As a practical matter, when you</p> <p>10 are getting a quote for an option</p> <p>11 position, it will be more difficult to</p> <p>12 obtain that quotation if you also require</p> <p>13 that option trader who is trading options,</p> <p>14 not the spot position, to provide both the</p> <p>15 spot position and the intrinsic value of</p> <p>16 the option.</p> <p>17 Q. Was --</p> <p>18 A. So we made the decision at the</p> <p>19 time to provide the spot rate in order to</p> <p>20 isolate and fix that and enable the</p> <p>21 quoting dealers to provide quotes on the</p> <p>22 value of the option which was, by far, the</p> <p>23 overwhelming value of the position, as I</p> <p>24 understand it.</p> <p>25 Q. But JPMorgan could have just</p>	<p style="text-align: right;">Page 157</p> <p>1 Thompson</p> <p>2 ask for quotations on a basis that other</p> <p>3 dealers would find burdensome or onerous</p> <p>4 to provide them, the result is that you</p> <p>5 fall away from the market quotation</p> <p>6 provision and you fall back to the loss</p> <p>7 provision, which does not have this</p> <p>8 objective third-party input aspect the</p> <p>9 market quotation does.</p> <p>10 Q. (Pause.)</p> <p>11 THE WITNESS: Is there any way</p> <p>12 he can just ask you the questions?</p> <p>13 Q. No.</p> <p>14 So, it's your testimony that the</p> <p>15 purpose of having this type of procedure</p> <p>16 is to get an objective third-party</p> <p>17 quotation that values these things</p> <p>18 independently in the market; is that</p> <p>19 right?</p> <p>20 A. That is the ra--</p> <p>21 MR. FELDBERG: Excuse me one</p> <p>22 second.</p> <p>23 Objection to the form.</p> <p>24 Please answer.</p> <p>25 THE WITNESS: Okay.</p>

40 (Pages 154 to 157)

<p style="text-align: right;">Page 158</p> <p>1 Thompson</p> <p>2 A. The rationale of the market</p> <p>3 quotation provision is to require people</p> <p>4 to make good-faith attempts to go out and</p> <p>5 obtain -- presumably, objective third-</p> <p>6 party input from other dealers as to the</p> <p>7 valuation of the position in a liquidated</p> <p>8 damages provision which is designed to</p> <p>9 make sure that both the legitimate</p> <p>10 interests of the non-defaulting party and</p> <p>11 the defaulting party are protected by</p> <p>12 valuing that transaction based on the</p> <p>13 market, as opposed to my say-so or your</p> <p>14 say-so within the banding of the</p> <p>15 provision.</p> <p>16 Q. So how is it objective if you</p> <p>17 are supplying part of the variables? It's</p> <p>18 your subjective decision to pick what</p> <p>19 variables to apply.</p> <p>20 A. Well, first of all, it is not a</p> <p>21 subjective setting of the spot rate. I</p> <p>22 believe the spot rates that were supplied</p> <p>23 were at the money spots.</p> <p>24 Q. Well, you say you "believe".</p> <p>25 Are you the person to answer that</p>	<p style="text-align: right;">Page 160</p> <p>1 Thompson</p> <p>2 week?</p> <p>3 A. It was sometime during that</p> <p>4 week.</p> <p>5 Q. And you just can't remember the</p> <p>6 particular day during that week?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 A. It obviously would have been</p> <p>10 prior to going out and asking for market</p> <p>11 quotations on that basis.</p> <p>12 Q. So, for the Japanese yen and</p> <p>13 Indonesian rubi--</p> <p>14 A. Rupiah.</p> <p>15 Q. -- rupiah, those two which were</p> <p>16 closed out on the 13th of January, you are</p> <p>17 telling me the conversation had been --</p> <p>18 preceded that.</p> <p>19 A. Yes.</p> <p>20 Q. Now, did you-all -- and, when I</p> <p>21 say "you-all" -- let me strike that.</p> <p>22 Did you, Piers Murray, and</p> <p>23 Arthur Agnes consult with anyone higher up</p> <p>24 within JPMorgan in reaching that decision</p> <p>25 to ask for indications?</p>
<p style="text-align: right;">Page 159</p> <p>1 Thompson</p> <p>2 question?</p> <p>3 A. No. That would be Piers Murray,</p> <p>4 as to whether the spot rates that were</p> <p>5 supplied to the quoting dealers for</p> <p>6 purposes of valuing the option positions</p> <p>7 was based on at the money spot rates. It</p> <p>8 is my understanding that they were.</p> <p>9 Q. And you gained that</p> <p>10 understanding how?</p> <p>11 A. That is my recollection of the</p> <p>12 discussion we had at the time as to</p> <p>13 whether it was appropriate to supply</p> <p>14 quoting dealers the spot rates.</p> <p>15 Q. Who was involved in that</p> <p>16 discussion?</p> <p>17 A. Myself, Arthur Magnus, and Piers</p> <p>18 Murray.</p> <p>19 Q. When did it take place?</p> <p>20 A. I do not recall the specific</p> <p>21 date on which it took place.</p> <p>22 Q. Was it prior to January 12,</p> <p>23 1998?</p> <p>24 A. No, it was not.</p> <p>25 Q. So it was sometime during that</p>	<p style="text-align: right;">Page 161</p> <p>1 Thompson</p> <p>2 A. I don't know who -- we are now</p> <p>3 back on indications, as opposed to</p> <p>4 supplying the spots.</p> <p>5 Q. I'm sorry, let me strike my</p> <p>6 question.</p> <p>7 Did you, Piers Murray, and</p> <p>8 Arthur Magnus consult with anyone else at</p> <p>9 JPMorgan on the appropriateness of</p> <p>10 supplying spot rates to obtain market</p> <p>11 quotations?</p> <p>12 A. I know I did not. I do not know</p> <p>13 whether Arthur or Piers did or not.</p> <p>14 Q. So they could have, you just</p> <p>15 don't know?</p> <p>16 A. Certainly possible.</p> <p>17 It would have been a somewhat</p> <p>18 bizarre conversation for me to have to ask</p> <p>19 them had they consulted with anybody else</p> <p>20 on this.</p> <p>21 Q. And why is that?</p> <p>22 A. Because it would be an odd</p> <p>23 question to ask.</p> <p>24 Q. In other words, in your mind,</p> <p>25 they had the authority to make that kind</p>

41 (Pages 158 to 161)